

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWARDS LIFESCIENCES LLC, et al.,

Plaintiffs,

No. C 03-03817 JSW

v.

COOK INCORPORATED, et al.,

Defendants,

**NOTICE OF TENTATIVE  
RULING AND QUESTIONS**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE  
NOTICE OF THE FOLLOWING TENTATIVE RULING AND QUESTIONS FOR THE  
HEARING SCHEDULED ON MARCH 28, 2008 AT 9:00 A.M.:

The Court has reviewed the parties' papers and, thus, does not wish to hear the parties  
reargue matters addressed in those pleadings. If the parties intend to rely on authorities not  
cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these  
authorities reasonably in advance of the hearing and to make copies available at the hearing. If  
the parties submit such additional authorities, they are ORDERED to submit the citations to the  
authorities only, with the reference to pin cites and without argument or additional briefing. *Cf.*  
N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral argument to  
explain their reliance on such authority.

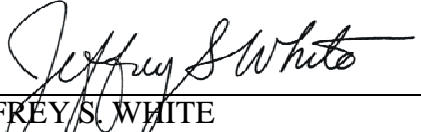
The Court tentatively DENIES the motion for leave to file an amended answer to  
Plaintiffs' Second Amended Complaint.

The parties each shall have 15 minutes to address the following questions:

1. When did Gore first learn of the facts alleged in paragraphs 48-53 and paragraphs 55-65 of its Amended Counterclaim?
2. What precluded Gore from previously asserting the inequitable conduct defense on information and belief? What “new” facts does Gore rely on in asserting the inequitable conduct defense at this stage in the litigation?
3. Gore notes that the Federal Circuit cautioned litigants with respect to pleading an inequitable conduct defense in *Burlington Indus., Inc. v. Dayco Corp.*, 849 F.2d 1418, 1422 (Fed. Cir. 1988). Plaintiffs have used the fact that Gore has not asserted the defense to instruct its witnesses not to answer questions pertaining to the defense. How would Plaintiffs propose Gore obtain the necessary discovery?
4. If the Court granted the motion, what additional discovery is needed and how long would it take to complete?
5. Are there any other issues the parties wish to address with respect to this motion?

**IT IS SO ORDERED.**

Dated: March 26, 2008

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE